damaged myocardium by administering stem cell products to damaged myocardium, classified in class 424, subclass 9.1, for example;

IV. Claim 11, drawn to a heart with stem cell products, classified in class 435, subclass 1.1., for example;

V. Claim 12, drawn to a composition for enriching or regenerating damaged myocardium comprising stem cell products, classified in class 424, subclass 93.7, for example;

VI. Claim 13, drawn to a composition for causing the expression of stem cell products, classified in class 514, subclass 1+, for example; and

VII. Claim 14, drawn to a method of creating stem cell by enriching stem cell cultures under hypoxic conditions, classified in class 435, subclass 375, for example.

Applicants provisionally elect Group I, claims 1 and 2 for prosecution purposes, with traverse. Applicants hereby conditionally withdraw claims 3-14 from prosecution, without prejudice, and request reconsideration of the restriction requirement.

Applicants traverse the restriction requirement based on the following grounds. It is respectfully submitted that the restriction requirement practice was established to promote efficiency of prosecution in the Patent Office. Groups I, III, V and VIII, claims 1, 2, 6, 7, 12 and 14, most of which are classified in Class 424 all relate to methods of treating heart failure. Specifically, all of the claims

recite the use of stem cell products for treating damaged heart, whether the heart is damaged by heart failure or by regenerating damaged myocardium within the heart. Also included in the groups are claims reciting compositions used for affecting such a treatment. It is well known to those of skill in the art that in treating heart failure, improving cardiac function can occur based on enriching or regenerating damaged myocardium. It is well established in the restriction requirement practice that claims pertaining to the same general inventive concept should be examined in a single application. Groups I, III, V and VII all include claims that pertain to a similar inventive concept and are all classified in the same class, Class 424. Since all are classified in the same class, it is respectfully requested that they be examined in a single application, since the examination of a single application does not cause undue hardship for the Examiner. It is argued that Groups I, III and V are drawn to different methods because they comprise different active steps and result in different effects. However, that is an improper recitation, as instead they all pertain to methods of treating the heart and cardiac function. Groups III and VII more specifically define how heart failure and heart function are treated and thus, fall under the general metes and bounds of the method recited in the claims of Group I. Since Groups III and VII more specifically define the treatment, namely treating heart failure and cardiac function by administering stem cell products, all of the claims should be examined in a single application. Accordingly, reconsideration of the restriction requirement is respectfully requested.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

The application is now in condition for allowance, which allowance is respectfully solicited.

Respectfully submitted,

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Connie Herty